

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.3208 OF 2004

Laxman Sukhdeoji Bhambore.
Petitioner.

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Vs.

Chairman cum Managing Director,
National Buildings Construction
Corporation Ltd. & Anr.

...Respondents.

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Mr. K.P. Anil Kumar for the Petitioner.
Mr. Ashok Singh for Respondent No.1.

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CORAM : [DR.D.Y.CHANDRACHUD](#), J.

January 11, 2005.

P.C.:

The Petitioner who was a Deputy General Manager in the National Buildings Construction Corporation Ltd., was chargesheeted on 29th June 2003 for a disciplinary proceeding. The Petitioner was due to retire on 30th June 2003 which means that the disciplinary proceedings were initiated while he was in service. Those proceedings were continued in accordance with the provisions of sub-rule (20) of Rule 8 of the NBCC (Discipline and Appeal) Rules 1993. On 22nd January 2004, the disciplinary

authority imposed upon the Petitioner a penalty of compulsory retirement. On 23rd February 2004 a notice was issued to the Petitioner to show cause as to why his gratuity be not forfeited on account of a loss of Rs.4.77 lakhs which was alleged to have been caused by the acts and omissions of the Petitioner. The Petitioner submitted a reply and an order was passed on 5th April 2004 forfeiting his gratuity of Rs.2,70,779/-. Though the petition has been filed in the month of November 2004, there is neither any disclosure in the body of the petition, nor in the synopsis of the fact that an order was passed on 5th April 2004 forfeiting his gratuity. Learned Counsel appearing on behalf of the Petitioner, in response to a query of the Court states that he does not consider it necessary to make an averment in respect of the order of forfeiture since what is sought to be challenged in these proceedings is the order of the appellate authority under the Payment of Gratuity Act, 1972.

2. The Petitioner moved the controlling authority under the Payment of Gratuity Act, 1972 and that authority passed an order

on 9th September 2003 allowing the application and directing the First Respondent to pay a total sum of Rs.2,70,779/- with simple interest at the rate of 10% p.a., computed from 30th June 2002. The order was challenged by the employer before the appellate authority. The appellate authority by its order dated 20th September 2004 reversed the order of the Controlling Authority. The appellate authority noted that the employer has imposed, in pursuance of the disciplinary proceedings, a penalty of compulsory retirement from service and that notice has been issued to the Petitioner to show cause as to why the gratuity should not be forfeited. The Petitioner, noted the appellate authority, had furnished a reply to the notice of forfeiture. In these circumstances, the appellate authority was of the view that the Petitioner would be at liberty to challenge the final order that may be passed by the appropriate authority in regard to the forfeiture of gratuity.

3. As already noted earlier, the competent authority has passed an order of forfeiture of gratuity on 5th April 2004. Section 4 (6) of the Payment of Gratuity Act, 1972 provides that the gratuity

of an employee whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused. The merits of the order of forfeiture cannot be determined in these proceedings since that order has not been challenged here. The Petitioner has also not challenged the order of compulsory retirement and, therefore, there is no occasion for this Court to express any opinion on the penalty imposed. At this stage, the order passed by the appellate authority cannot be faulted. Not merely as the appellate authority noted, was a notice issued to the Petitioner to show cause against the forfeiture of gratuity, but it has now transpired that an order was passed forfeiting the gratuity. The submission urged on behalf of the Petitioner is that on the date on which the Petitioner moved the Controlling Authority for the release of gratuity, there was no order of termination, hence, no order of forfeiture of gratuity could have been passed. Counsel submitted that the provisions of the Discipline and Appeal Rules of the Corporation which permit the withholding of gratuity during the

pendency of disciplinary proceedings would to that extent run contrary to the Payment of Gratuity Act. For the purposes of these proceedings, it is not necessary for the Court to enter into an area wider than what is necessary for deciding the issue which arises herein. At this stage, there is an order of forfeiture that has been passed which is neither disclosed nor challenged. In that view of the matter, it would not be consistent, having regard to the provisions of Section 4(6) to issue directions for the payment of gratuity, when in fact, the order of forfeiture continues to subsist. The jurisdiction under Article 226 cannot appropriately be exercised in such a case.

4. The appellate authority has granted liberty to the Petitioner to challenge the final order in regard to the forfeiture of gratuity if indeed one was passed. Though the Petitioner has not challenged that order dated 5th April 2004 in this petition, while rejecting the petition, it is clarified that it would be open to the Petitioner to adopt such proceedings as he may be advised to pursue in accordance with law.

5. The Petition is accordingly rejected.

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